

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

**DONNA MARIE MCARDLE**  
**a.k.a. DONNA MARIE REESE**  
**a.k.a. DONNA MARIE HINCH**  
**1370 Craigmont Street**  
**El Cajon, CA 92019**

Registered Nurse License No. **537530**

Respondent

Case No. 2011-343

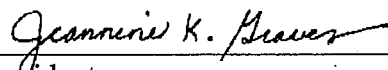
OAH No. 2010120557

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **September 2, 2011.**

IT IS SO ORDERED **August 4, 2011.**

  
\_\_\_\_\_  
President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
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*Attorneys for Complainant*

8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2011-343

12 **DONNA MARIE MCARDLE, AKA,**  
13 **DONNA MARIE REESE AKA DONNA**  
**MARIE HINCH**

OAH No. 2010120557

14 **1370 Cragmont Street**  
15 **El Cajon, CA 92019**

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

16 **Registered Nurse License No. 537530**

17 Respondent.  
18

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
20 entitled proceedings that the following matters are true:

21 PARTIES

22 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Executive Officer of the Board of  
23 Registered Nursing. She brought this action solely in her official capacity and is represented in  
24 this matter by Kamala D. Harris, Attorney General of the State of California, by Diane de Kervor,  
25 Deputy Attorney General.

26 2. Respondent Donna Marie McArdle, aka, Donna Marie Reese aka Donna Marie Hinch  
27 (Respondent) is represented in this proceeding by attorney Kevin Murphy, whose address is:  
28 2445 fifth Ave, Ste. 330, San Diego, CA 92101.

3. On or about October 9, 1997, the Board of Registered Nursing issued Registered Nurse License No. 537530 to Donna Marie McArdle, aka, Donna Marie Reese aka Donna Marie Hinch (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought in Accusation No. 2011-343 and will expire on September 30, 2011, unless renewed.

## JURISDICTION

4. Accusation No. 2011-343 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on October 14, 2010. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2011-343 is attached as exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2011-343. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in Accusation  
3 No. 2011-343.

4 9. Respondent agrees that her Registered Nurse License is subject to discipline and she  
5 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order  
6 below.

7 RESERVATION

8 10. The admissions made by Respondent herein are only for the purposes of this  
9 proceeding, or any other proceedings in which the Board of Registered Nursing or other  
10 professional licensing agency is involved, and shall not be admissible in any other criminal or  
11 civil proceeding.

12 CONTINGENCY

13 11. This stipulation shall be subject to approval by the Board of Registered Nursing.  
14 Respondent understands and agrees that counsel for Complainant and the staff of the Board of  
15 Registered Nursing may communicate directly with the Board regarding this stipulation and  
16 settlement, without notice to or participation by Respondent or her counsel. By signing the  
17 stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek  
18 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails  
19 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary  
20 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal  
21 action between the parties, and the Board shall not be disqualified from further action by having  
22 considered this matter.

23 12. The parties understand and agree that facsimile copies of this Stipulated Settlement  
24 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and  
25 effect as the originals.

26 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an  
27 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
28 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,

1 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary  
2 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a  
3 writing executed by an authorized representative of each of the parties.

4 14. In consideration of the foregoing admissions and stipulations, the parties agree that  
5 the Board may, without further notice or formal proceeding, issue and enter the following  
6 Disciplinary Order:

7 **DISCIPLINARY ORDER**

8 IT IS HEREBY ORDERED that Registered Nurse License No. 537530 issued to  
9 Respondent Donna Marie McArdle, aka, Donna Marie Reese aka Donna Marie Hinch  
10 (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on  
11 probation for three (3) years on the following terms and conditions.

12 **Severability Clause.** Each condition of probation contained herein is a separate and  
13 distinct condition. If any condition of this Order, or any application thereof, is declared  
14 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other  
15 applications thereof, shall not be affected. Each condition of this Order shall separately be valid  
16 and enforceable to the fullest extent permitted by law.

17 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A  
18 full and detailed account of any and all violations of law shall be reported by Respondent to the  
19 Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of  
20 compliance with this condition, Respondent shall submit completed fingerprint forms and  
21 fingerprint fees within 45 days of the effective date of the decision, unless previously submitted  
22 as part of the licensure application process.

23 **Criminal Court Orders:** If Respondent is under criminal court orders, including  
24 probation or parole, and the order is violated, this shall be deemed a violation of these probation  
25 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

26 2. **Comply with the Board's Probation Program.** Respondent shall fully  
27 comply with the conditions of the Probation Program established by the Board and cooperate with  
28 representatives of the Board in its monitoring and investigation of the Respondent's compliance

1 with the Board's Probation Program. Respondent shall inform the Board in writing within no  
2 more than 15 days of any address change and shall at all times maintain an active, current license  
3 status with the Board, including during any period of suspension.

4 Upon successful completion of probation, Respondent's license shall be fully restored.

5 3. **Report in Person.** Respondent, during the period of probation, shall  
6 appear in person at interviews/meetings as directed by the Board or its designated representatives.

7 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency  
8 or practice as a registered nurse outside of California shall not apply toward a reduction of this  
9 probation time period. Respondent's probation is tolled, if and when she resides outside of  
10 California. Respondent must provide written notice to the Board within 15 days of any change of  
11 residency or practice outside the state, and within 30 days prior to re-establishing residency or  
12 returning to practice in this state.

13 Respondent shall provide a list of all states and territories where she has ever been licensed  
14 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide  
15 information regarding the status of each license and any changes in such license status during the  
16 term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing  
17 license during the term of probation.

18 5. **Submit Written Reports.** Respondent, during the period of probation,  
19 shall submit or cause to be submitted such written reports/declarations and verification of actions  
20 under penalty of perjury, as required by the Board. These reports/declarations shall contain  
21 statements relative to Respondent's compliance with all the conditions of the Board's Probation  
22 Program. Respondent shall immediately execute all release of information forms as may be  
23 required by the Board or its representatives.

24 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every  
25 state and territory in which she has a registered nurse license.

26 6. **Function as a Registered Nurse.** Respondent, during the period of  
27 probation, shall engage in the practice of registered nursing in California for a minimum of 24  
28 hours per week for 6 consecutive months or as determined by the Board.

1 For purposes of compliance with the section, "engage in the practice of registered nursing"  
2 may include, when approved by the Board, volunteer work as a registered nurse, or work in any  
3 non-direct patient care position that requires licensure as a registered nurse.

4 The Board may require that advanced practice nurses engage in advanced practice nursing  
5 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

6 If Respondent has not complied with this condition during the probationary term, and  
7 Respondent has presented sufficient documentation of her good faith efforts to comply with this  
8 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an  
9 extension of Respondent's probation period up to one year without further hearing in order to  
10 comply with this condition. During the one year extension, all original conditions of probation  
11 shall apply.

12 **7. Employment Approval and Reporting Requirements.** Respondent shall  
13 obtain prior approval from the Board before commencing or continuing any employment, paid or  
14 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all  
15 performance evaluations and other employment related reports as a registered nurse upon request  
16 of the Board.

17 Respondent shall provide a copy of this Decision to her employer and immediate  
18 supervisors prior to commencement of any nursing or other health care related employment.

19 In addition to the above, Respondent shall notify the Board in writing within seventy-two  
20 (72) hours after she obtains any nursing or other health care related employment. Respondent  
21 shall notify the Board in writing within seventy-two (72) hours after she is terminated or  
22 separated, regardless of cause, from any nursing, or other health care related employment with a  
23 full explanation of the circumstances surrounding the termination or separation.

24 **8. Supervision.** Respondent shall obtain prior approval from the Board  
25 regarding Respondent's level of supervision and/or collaboration before commencing or  
26 continuing any employment as a registered nurse, or education and training that includes patient  
27 care.

28 Respondent shall practice only under the direct supervision of a registered nurse in good

standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each shift worked.

(d) Home Health Care - If Respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by Respondent with or without Respondent present.

**9. Employment Limitations.** Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses.

The Board may additionally restrict Respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.



Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If Respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to Respondent after photocopying them for its records.

11. **Cost Recovery.** Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$1,817.50. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

12. **Violation of Probation.** If Respondent violates the conditions of her probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been

1 filed against Respondent's license or the Attorney General's Office has been requested to prepare  
2 an accusation or petition to revoke probation against Respondent's license, the probationary  
3 period shall automatically be extended and shall not expire until the accusation or petition has  
4 been acted upon by the Board.

5           13.     **License Surrender.** During Respondent's term of probation, if she ceases  
6 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of  
7 probation, Respondent may surrender her license to the Board. The Board reserves the right to  
8 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to  
9 take any other action deemed appropriate and reasonable under the circumstances, without further  
10 hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no  
11 longer be subject to the conditions of probation.

12           Surrender of Respondent's license shall be considered a disciplinary action and shall  
13 become a part of Respondent's license history with the Board. A registered nurse whose license  
14 has been surrendered may petition the Board for reinstatement no sooner than the following  
15 minimum periods from the effective date of the disciplinary decision:

16           (1)     Two years for reinstatement of a license that was surrendered for any reason other  
17 than a mental or physical illness; or

18           (2)     One year for a license surrendered for a mental or physical illness.

19           14.     **Physical Examination.** Within 45 days of the effective date of this  
20 Decision, Respondent, at her expense, shall have a licensed physician, nurse practitioner, or  
21 physician assistant, who is approved by the Board before the assessment is performed, submit an  
22 assessment of the Respondent's physical condition and capability to perform the duties of a  
23 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If  
24 medically determined, a recommended treatment program will be instituted and followed by the  
25 Respondent with the physician, nurse practitioner, or physician assistant providing written reports  
26 to the Board on forms provided by the Board.

27           If Respondent is determined to be unable to practice safely as a registered nurse, the  
28 licensed physician, nurse practitioner, or physician assistant making this determination shall

1 immediately notify the Board and Respondent by telephone, and the Board shall request that the  
2 Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall  
3 immediately cease practice and shall not resume practice until notified by the Board. During this  
4 period of suspension, Respondent shall not engage in any practice for which a license issued by  
5 the Board is required until the Board has notified Respondent that a medical determination  
6 permits Respondent to resume practice. This period of suspension will not apply to the reduction  
7 of this probationary time period.

8 If Respondent fails to have the above assessment submitted to the Board within the 45-day  
9 requirement, Respondent shall immediately cease practice and shall not resume practice until  
10 notified by the Board. This period of suspension will not apply to the reduction of this  
11 probationary time period. The Board may waive or postpone this suspension only if significant,  
12 documented evidence of mitigation is provided. Such evidence must establish good faith efforts  
13 by Respondent to obtain the assessment, and a specific date for compliance must be provided.

14 Only one such waiver or extension may be permitted.

15 **15. Participate in Treatment/Rehabilitation Program for Chemical**  
16 **Dependence.** Respondent, at her expense, shall successfully complete during the probationary  
17 period or shall have successfully completed prior to commencement of probation a Board-  
18 approved treatment/rehabilitation program of at least six months duration. As required, reports  
19 shall be submitted by the program on forms provided by the Board. If Respondent has not  
20 completed a Board-approved treatment/rehabilitation program prior to commencement of  
21 probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in  
22 a program. If a program is not successfully completed within the first nine months of probation,  
23 the Board shall consider Respondent in violation of probation.

24 Based on Board recommendation, each week Respondent shall be required to attend at least  
25 one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous,  
26 Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board.

27 If a nurse support group is not available, an additional 12-step meeting or equivalent shall be  
28 added. Respondent shall submit dated and signed documentation confirming such attendance to

1 the Board during the entire period of probation. Respondent shall continue with the recovery plan  
2 recommended by the treatment/rehabilitation program or a licensed mental health examiner  
3 and/or other ongoing recovery groups.

4           **16. Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent  
5 shall completely abstain from the possession, injection or consumption by any route of all  
6 controlled substances and all psychotropic (mood altering) drugs, including alcohol, except when  
7 the same are ordered by a health care professional legally authorized to do so as part of  
8 documented medical treatment. Respondent shall have sent to the Board, in writing and within  
9 fourteen (14) days, by the prescribing health professional, a report identifying the medication,  
10 dosage, the date the medication was prescribed, the Respondent's prognosis, the date the  
11 medication will no longer be required, and the effect on the recovery plan, if appropriate.

12           Respondent shall identify for the Board a single physician, nurse practitioner or physician  
13 assistant who shall be aware of Respondent's history of substance abuse and will coordinate and  
14 monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-  
15 altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report  
16 to the Board on a quarterly basis Respondent's compliance with this condition. If any substances  
17 considered addictive have been prescribed, the report shall identify a program for the time limited  
18 use of any such substances.

19           The Board may require the single coordinating physician, nurse practitioner, or physician  
20 assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive  
21 medicine.

22           **17. Submit to Tests and Samples.** Respondent, at her expense, shall  
23 participate in a random, biological fluid testing or a drug screening program which the Board  
24 approves. The length of time and frequency will be subject to approval by the Board.  
25 Respondent is responsible for keeping the Board informed of Respondent's current telephone  
26 number at all times. Respondent shall also ensure that messages may be left at the telephone  
27 number when she is not available and ensure that reports are submitted directly by the testing  
28 agency to the Board, as directed. Any confirmed positive finding shall be reported immediately

1 to the Board by the program and Respondent shall be considered in violation of probation.

2 In addition, Respondent, at any time during the period of probation, shall fully cooperate  
3 with the Board or any of its representatives, and shall, when requested, submit to such tests and  
4 samples as the Board or its representatives may require for the detection of alcohol, narcotics,  
5 hypnotics, dangerous drugs, or other controlled substances.

6 If Respondent has a positive drug screen for any substance not legally authorized and not  
7 reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board  
8 files a petition to revoke probation or an accusation, the Board may suspend Respondent from  
9 practice pending the final decision on the petition to revoke probation or the accusation. This  
10 period of suspension will not apply to the reduction of this probationary time period.

11 If Respondent fails to participate in a random, biological fluid testing or drug screening  
12 program within the specified time frame, Respondent shall immediately cease practice and shall  
13 not resume practice until notified by the Board. After taking into account documented evidence  
14 of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may  
15 suspend Respondent from practice pending the final decision on the petition to revoke probation  
16 or the accusation. This period of suspension will not apply to the reduction of this probationary  
17 time period.

18 **18. Mental Health Examination.** Respondent shall, within 45 days of the  
19 effective date of this Decision, have a mental health examination including psychological testing  
20 as appropriate to determine her capability to perform the duties of a registered nurse. The  
21 examination will be performed by a psychiatrist, psychologist or other licensed mental health  
22 practitioner approved by the Board. The examining mental health practitioner will submit a  
23 written report of that assessment and recommendations to the Board. All costs are the  
24 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a  
25 result of the mental health examination will be instituted and followed by Respondent.

26 If Respondent is determined to be unable to practice safely as a registered nurse, the  
27 licensed mental health care practitioner making this determination shall immediately notify the  
28 Board and Respondent by telephone, and the Board shall request that the Attorney General's

1 office prepare a 1 accusation or petition to revoke probation. Respondent shall immediately cease  
2 practice and may not resume practice until notified by the Board. During this period of  
3 suspension, Respondent shall not engage in any practice for which a license issued by the Board  
4 is required, until the Board has notified Respondent that a mental health determination permits  
5 Respondent to resume practice. This period of suspension will not apply to the reduction of this  
6 probationary time period.

7 If Respondent fails to have the above assessment submitted to the Board within the 45-day  
8 requirement, Respondent shall immediately cease practice and shall not resume practice until  
9 notified by the Board. This period of suspension will not apply to the reduction of this  
10 probationary time period. The Board may waive or postpone this suspension only if significant,  
11 documented evidence of mitigation is provided. Such evidence must establish good faith efforts  
12 by Respondent to obtain the assessment, and a specific date for compliance must be provided.  
13 Only one such waiver or extension may be permitted.

14 11. **Therapy or Counseling Program.** Respondent, at her expense, shall  
15 participate in an on-going counseling program until such time as the Board releases her from this  
16 requirement and only upon the recommendation of the counselor. Written progress reports from  
17 the counselor will be required at various intervals.

18 ACCEPTANCE

19 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
20 discussed it with my attorney, Kevin Murphy. I understand the stipulation and the effect it will  
21 have on my Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary  
22 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order  
23 of the Board of Registered Nursing.

24  
25 DATED: 6-3-2011

  
26 DONNA MARIE MCARDLE  
27 Respondent  
28

1 I have read and fully discussed with Respondent the terms and conditions and other matters  
2 contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and  
3 content.

4 DATED: 6/5/11

5   
KEVIN MURPHY  
Attorney for Respondent

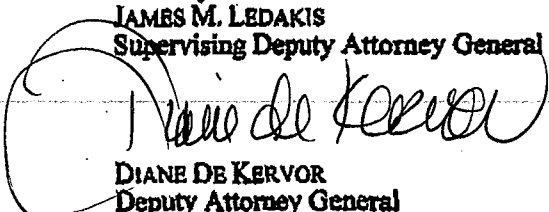
6 **ENDORSEMENT**

7 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
8 submitted for consideration by the Board of Registered Nursing of the Department of Consumer  
9 Affairs.

10 Dated: June 7, 2011

Respectfully submitted,

11 KAMALA D. HARRIS  
12 Attorney General of California  
13 JAMES M. LEDAKIS  
Supervising Deputy Attorney General

14   
15 DIANE DE KERVOR  
16 Deputy Attorney General  
Attorneys for Complainant

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06/06/2011 17:08

STIPULATED SETTLEMENT

**Exhibit A**

**Accusation No. 2011-343**

8/11/12 8:11:12



1 EDMUND G. BROWN JR.  
Attorney General of California  
2 ALFREDO TERRAZAS  
Senior Assistant Attorney General  
3 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
4 State Bar No. 101336  
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6 San Diego, CA 92186-5266  
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7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. **2011 - 343**

12 **DONNA MARIE MCARDLE**  
13 **aka DONNA MARIE REESE**  
14 **aka DONNA MARIE HINCH**  
15 **1370 Craigmont Street**  
**El Cajon, CA 92019**

**ACCUSATION**

16 **Registered Nurse License No. 537530**

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
22 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department  
23 of Consumer Affairs.

24 2. On or about October 9, 1997, the Board of Registered Nursing issued Registered  
25 Nurse License Number 537530 to Donna Marie McArdle aka Donna Marie Reese aka Donna  
26 Marie Hinch (Respondent). The Registered Nurse License was in full force and effect at all times  
27 relevant to the charges brought herein and will expire on September 30, 2011, unless renewed.  
28

## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b), an expired license may be renewed at any time within eight years after expiration.

## STATUTORY PROVISIONS

6. Section 482 of the Code states:

"Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

"(a) Considering the denial of a license by the board under Section 480; or

"(b) Considering suspension or revocation of a license under Section 490.

"Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

7. Section 490 of the Code provides that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued..

8. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the

1 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
2 and the board may inquire into the circumstances surrounding the commission of the crime in  
3 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
4 qualifications, functions, and duties of the licensee in question.

5 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and  
6 'registration.'"

7 9. Section 2761 of the Code states:

8 "The board may take disciplinary action against a certified or licensed nurse or deny an  
9 application for a certificate or license for any of the following:

10 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

11 "....

12 "(f) Conviction of a felony or of any offense substantially related to the qualifications,  
13 functions, and duties of a registered nurse, in which event the record of the conviction shall be  
14 conclusive evidence thereof.

15 "...."

16 10. Section 2762 of the Code states:

17 "In addition to other acts constituting unprofessional conduct within the meaning of this  
18 chapter it is unprofessional conduct for a person licensed under this chapter to do any of the  
19 following:

20 "....

21 "(b) Use any controlled substance as defined in Division 10 (commencing with Section  
22 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in  
23 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to  
24 himself or herself, any other person, or the public or to the extent that such use impairs his or her  
25 ability to conduct with safety to the public the practice authorized by his or her license.

26 "(c) Be convicted of a criminal offense involving the prescription, consumption, or self-  
27 administration of any of the substances described in subdivisions (a) and (b) of this section, or the

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possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof."

11. Section 2765 of the Code states:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a registered nurse is deemed to be a conviction within the meaning of this article. The board may order the license or certificate suspended or revoked, or may decline to issue a license or certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment."

#### REGULATIONS

12. California Code of Regulations, title 16, section 1444, states:

"A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

"(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

"(b) Failure to comply with any mandatory reporting requirements.

"(c) Theft, dishonesty, fraud, or deceit.

"(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code."

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1 13. California Code of Regulations, title 16, section 1445 states:

2 ".....

3 "(b) When considering the suspension or revocation of a license on the grounds that a  
4 registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such  
5 person and his/her eligibility for a license will consider the following criteria:

6 "(1) Nature and severity of the act(s) or offense(s).

7 "(2) Total criminal record.

8 "(3) The time that has elapsed since commission of the act(s) or offense(s).

9 "(4) Whether the licensee has complied with any terms of parole, probation, restitution or  
10 any other sanctions lawfully imposed against the licensee.

11 "(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the  
12 Penal Code.

13 "(6) Evidence, if any, of rehabilitation submitted by the licensee."

14 **COST RECOVERY**

15 14. Section 125.3 of the Code provides that the Board may request the administrative law  
16 judge to direct a licensee found to have committed a violation or violations of the licensing act to  
17 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(April 23, 2010, Conviction for DUI on March 11, 2010)**

20 15. Respondent is subject to disciplinary action under Code sections 490 and 2761,  
21 subdivision (f), on the grounds that she was convicted of a crime that is substantially related to  
22 the qualifications, functions and duties as a registered nurse. The circumstances are as follows:

23 a. On April 23, 2010, in a criminal case entitled *The People of the State of California v.*  
24 *Donna McArdle*, San Diego Superior Court, East County Division, case number C299749,  
25 Respondent was convicted by her plea of guilty of violating Vehicle Code sections 23152,  
26 subdivision (b), driving with a blood alcohol content (BAC) of more than .08 percent and an  
27 enhancement of violating Vehicle Code section 23578, driving with a BAC of more than  
28 .15 percent.

1           b.     The facts that led to the conviction on that on October 24, 2009, a California  
2 Highway Patrol (CHP) officer noticed that a green Cadillac had fresh damage to the right front  
3 fender, hood and bumper when he was at a traffic light at the intersection of Jamacha Boulevard  
4 and East Main Street in the City of El Cajon. The CHP officer initiated an enforcement stop after  
5 the driver of the Cadillac passed the CHP's patrol vehicle and jerked her vehicle into the #2 lane  
6 in front of the CHP officer. Upon contact with Respondent the CHP officer could smell the odor  
7 of an alcoholic beverage emitting from within the vehicle, noticed her eyes were red and watery,  
8 her speech was slow, slurred and she was lethargic. Respondent told the CHP officer that she was  
9 involved in an accident a few moments before he stopped her, and said she was in a hurry to get  
10 home. Respondent stated that a car pulled in front of her on East Main Street and that she already  
11 exchanged information with the driver of the other vehicle involved in the collision. An El Cajon  
12 Police Department officer was driving by and the CHP officer flagged him down. The El Cajon  
13 Police Department officer told the CHP officer that Respondent's vehicle matched the description  
14 of a vehicle that just left the scene of the collision (hit and run). When Respondent exited her  
15 vehicle she was very unsteady on her feet and walked in a side to side manner. Respondent  
16 became argumentative and was resistant to answer any of the officer's questions. Respondent  
17 was arrested and was verbally and physically resistant when it came time to place her in the patrol  
18 vehicle. Respondent agreed to take a breath test that twice yielded results of .20 percent BAC.

19           c.     As a result of the conviction, Respondent was sentenced to summary probation for  
20 5 years; ordered to adhere to standard alcohol conditions per Vehicle Code section 23600,  
21 complete 10 days of a Public Service Program (PSP) with credit for 2 days time served, complete  
22 a First Conviction Program and a Mothers Against Drunk Driving (MADD) program, violate no  
23 laws, pay various fines and fees, and not drive without a valid driver's license and liability  
24 insurance.

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**SECOND CAUSE FOR DISCIPLINE**

**(Using Alcohol to a Dangerous Extent to Herself and Others)**

16. Respondent's license is subject to discipline under Code section 2762, subdivision (b), in that Respondent used alcohol to an extent dangerous to herself and others as is set forth in paragraph 15, above, which is incorporated by this reference.

**THIRD CAUSE FOR DISCIPLINE**

**(Criminal Conviction Involving the Consumption of Alcohol)**

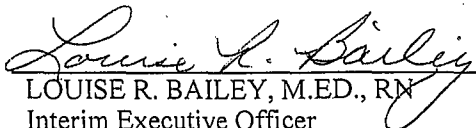
17. Respondent's license is subject to discipline under Code section 2762, subdivision (c), in that Respondent was convicted of a criminal offense involving the consumption of alcohol as is set forth in paragraph 15, above, which is incorporated by this reference.

**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 537530, issued to Donna Marie McArdle aka Donna Marie Reese aka Donna Marie Hinch;
2. Ordering Donna Marie McArdle aka Donna Marie Reese aka Donna Marie Hinch to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: October 14, 2010

  
LOUISE R. BAILEY, M.ED., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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